IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

Crl.MC.No. 332 of 2006()

CRRP.28/2004 of ADDL.SESSIONS COURT, (ADHOC), ERNAKULAM
MC.122/1998 of SUB DIVISIONAL MAGISTRATE, FORT KOCHI

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PETITIONER/REVISION PETITIONER/RESPONDENT:

SRI.MOHAMEDALI, S/O.ABUBACKER,
MANGALATH HOUSE, WARD 9, EDAVANAKKAD.

BY ADV. SRI.C.S.RAMANATHAN

RESPONDENT/RESPONDENTS/PETITIONER:

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1. KUNJU MOIDEEN, VALIYARA (H),
WARD NO.4, EDAVANAKKAD VILLAGE.

2. AYSU, W/O.ABDULLKUTTY,
VALIYARA (H), WARD NO.4, EDAVANAKKAD VILLAGE.

3. IBRAHIM, S/O.ABDULKUTTY,
VALIYARA (H), WARD NO. 4, EDAVANAKKAD VILLAGE.

4. NAUSHAD, S/O.ABDUL RAHIMAN,
CHULIPARAMBIL, VALIYARA (H), WARD NO.4,
EDAVANAKKAD VILLAGE.

5. SAIPHY RAHIMAN, S/O.ABDUL RAHIMAN,
CHULLIPARAMBIL, VALIYARA (H), WARD NO.4,
EDAVANAKKAD VILLAGE.

6. PATHA, W/O.C.K.ABDUL RAHIMAN,
VALIYARA (H), WARD NO.4, EDAVANAKKAD VILLAGE.

7. NAFEESA, W/O.C.K.MOHAMMED ALI,
VALIYARA (H), WARD NO.4, EDAVANAKKAD VILLAGE.

8. KOCHU KHADEEJA, W/O.C.K.ABDUL KHADER,
VALIYARA (H), WARD NO.4, EDAVANAKKAD VILLAGE.

9. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.C.ANILKUMAR (KALLESSERIL) FOR R1,R3,R4,R5,R6,R7& R8
SRI.V.E.ABDUL GAFOOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.332 of 2006

Dated this the 5th day of January 2007

O R D E R

This petition under Section 482 Cr.P.C is filed by the petitioner, who is the respondent in a proceedings initiated by the Sub Divisional Magistrate under Section 133 Cr.P.C. There was an allegation that free flow of water through a public channel (thodu) through private property is obstructed by the petitioner. The petitioner did not raise any specific dispute about the existence of the thodu or the flow of water through the thodu but he contended that there was no obstruction to the flow of water through the thodu.

2. The Sub Divisional Magistrate did not evidently conduct any enquiry under Section 137 of the Cr.P.C. Obviously, such enquiry was not necessary as there was no dispute about the nature of public right over the thodu. The question was only whether there was objectionable obstruction to the flow of water through the thodu. The Sub Divisional Magistrate found that there was no obstruction. In revision, the learned Sessions Judge confirmed that there was objectionable obstruction to the

flow of water. It is accordingly that the Sub Divisional Magistrate passed the impugned order and the Sessions Judge confirmed the order.

3. The petitioner has come before this court with this petition under Section 482 Cr.P.C. Obviously, a second revision is not permissible in the light of the mandate of Section 397(3) Cr.P.C and hence the petitioner has entered through the door of Section 482 Cr.P.C. I find absolutely nothing vitiating the crucial finding that there is objectionable obstruction to the flow of water. Though, initially this court felt that not passing an order under Section 137 of the Cr.P.C would vitiate the final order passed, on perusing the nature of contentions raised in the objection statement dated 21/07/1998 by the petitioners herein, it is evident that the Sub Divisional Magistrate had no obligation to conduct any enquiry or pass an order under Section 137 Cr.P.C, no objection having been raised against the existence of public right over the thodu in question.

4. In these circumstances, I find no merit in the challenge raised against the impugned order in this proceedings under Section 482 Cr.P.C. The petition is, in these circumstances liable to be dismissed.

5. The learned counsel for the petitioner further submits that a change has taken place on the state of affairs in the locality and it has now been ensured that there is free flow of water through the petitioner's property. Of course, that contention can be raised before the Sub Divisional Magistrate when the order is sought to be executed.

6. In the result, this Criminal Miscellaneous Case is dismissed. Needless to say, it shall be open to the petitioner to show before the Sub Divisional Magistrate that the order has already been complied with.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006